

LOUISIANA' S COMMUNITY
PROPERTY LAW
AND
HOW TO CHANGE ITS EFFECTS
BY CONTRACT



This pamphlet is designed to explain how Louisiana's community property law establishes the property rights of husbands and wives and how the effects of the community property system can be altered by contract.

***Louisiana Department of Justice
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2004

In Louisiana, marriage affects the property rights of both men and women. The rights of married people to buy, sell, or control their property, to borrow money, and to get credit are all regulated by law. Property includes almost everything: house, land, bank accounts, stock, pension plans, wages and other income and things of value.

A married couple becomes subject to Louisiana's community property law *automatically* upon marrying, unless they have made a special contract providing different rules to govern their property.

What is the Community Property System?

The community property system is a set of laws adopted by the Louisiana legislature which provide how a married couple will own and manage their property. The community property system also provides rules on who may incur debts, how those debts are to be paid, and how debts and assets are to be divided between the husband and wife if their community ends.

The foundation of the community property system is the rule of law that most property acquired by a married person during his or her marriage is owned by the husband and wife together. During marriage, the husband owns a half interest and the wife owns a half interest. When the community ends, each gets one-half (2) of the community property that is left over after the debts have been paid. In this way, the law recognizes that both spouses contribute to the marriage, even if one spouse earns substantially less than the other or nothing at all.

At the end of a married couple's community property system, all things that the husband and the wife have are presumed to be community property. If an asset is really separate property, the husband or the wife who owns it must prove that it is his or her separate property. It may be hard to prove what things are separate if the husband and wife have mixed separate property and community property.

The law calls this mixture of property commingled property.

If a married couple keeps good records to show what money comes from what source, and they keep the separate money and community money divided, it is much easier to distribute the property when the community is terminated by death or divorce.

Ways to end or alter a Community Property System

A community property system ends upon the death of either spouse, or may be ended by a divorce, by a court-declared annulment of the marriage, by a contract between the husband and the wife, or by a court judgment setting up a separate property system instead of a community property system.

Two Kinds of Property: Community and Separate

Not all property owned by a husband and a wife is community property. Property owned by either spouse before their marriage, gifts made solely to the husband or the wife, and the property inherited by the husband or the wife are the separate property of the one who received it. Separate property does not belong to both spouses.

Community property includes the salaries of both spouses, things they buy with their community property money, and the rent and other income earned from community property. Damages received by a husband or wife, because of the loss of or damage to something that is community property, are also classified as community property. Damages paid to a married person because of an injury, however, are usually the separate property of the injured spouse.

Income from separate property is usually community property under Louisiana law. If either the husband or the wife, however, does not want to share the ownership of the income from separate property, that spouse can make a declaration before a Notary Public. After the document is filed in the parish conveyance records, the income from separate property will also be classified as separate property, and the other spouse will not have an ownership interest.

Controlling the Use of Property

In the community property system, control of the property is different from ownership of the property. Even though the husband and wife both own community property, some of it can be sold by one of them alone; however, some of it cannot be sold, mortgaged, or leased unless the husband and wife both agree. For example, both husband and wife are needed for the sale, mortgage or lease of: real estate, furniture located in their family home, a community-owned business, or things registered in both of their names. So, even if a house or piece of land bought during the marriage is listed in only one name, it still cannot be sold without the agreement of both spouses. Both spouses must also be in agreement before major expensive gifts can be given.

In some instances, either the husband or the wife alone can sell, mortgage, or lease community property even if the other disagrees. For example, things that do not have a registered title can be sold by either one of them. Things that are registered (such as motor vehicles) in one name alone can be sold only by the one in whose name it is registered. The husband or wife who runs a community business does not need the other spouses consent to make everyday decisions to run the business. Both must agree, however, before the business can be sold - even if only one of them operates the community owned business.

Either spouse is allowed to spend money that is community property without the consent of the other. A debt that a spouse incurs either before the marriage or during the marriage can be paid from any community property money, regardless of who earned the money. A debt can also be paid from the separate property of the spouse who made the debt. Generally, the other spouse cannot be forced to use his or her separate money or property to pay a debt the other spouse made either before or during the marriage.

Either spouse can use the total value of the community property to get unsecured credit. Both husband and wife must agree, however, before a house, land, or furnishings located in their family home can be mortgaged to secure a loan.

Marriage Contracts

A man and woman who plan to marry and live in Louisiana may not want to be governed by the community property system provided by Louisiana law. In such cases, the couple may make a written marriage contract before the wedding which sets out how they want their property owned and controlled. A marriage contract written before marriage does not need court approval. People who get married in another state and later move into Louisiana have one year after they move to Louisiana to make a marriage contract without a judge's approval before they fall under the community property system.

After a couple is married, or if one year has passed since a couple moved into Louisiana, they may write a marriage contract for the first time or change one that already exists. If the contract written after the wedding sets up any rule different from the rules of law of the community property system, the contract must receive court approval. The judge will ask if both husband and wife understand what the contract means, and the judge will decide if it is in the best interest of the married couple to have the new contract. A married couple will not need court approval if their contract is just to change from a marriage contract to the community property system set up by law.

All marriage contracts must be in writing and must be signed by the man and woman in the presence of a Notary Public and two witnesses, or it must be executed by private signature duly acknowledged. The latter phrase means that the contract must be signed by a person who later acknowledges to a notary that his or her signature is valid. All marriage contracts must also be recorded in the conveyance records in the parish where the couple is domiciled and in each parish where they own real estate.

If you wish to have further help in understanding the community property system, or if you are thinking about making a marriage contract, you should talk to a lawyer. In addition to any questions you may have, a lawyer can explain how the marriage contract may change property taxes and inheritance rights to your property.

Remember these things:

1. By law, marriage changes your property rights.
2. The community property law will apply to you if you do not make a special marriage contract.
3. You may make this special contract before or after you are married, but some contracts written after marriage require a judge's approval to be legal.
4. If you were married outside of Louisiana, moving here has changed your property rights. You have one year from the date you moved to make a marriage contract without a judge's approval.
5. The contract must be signed by the man and woman in the presence of a Notary Public and two witnesses or executed by private signature duly acknowledged.
6. You should see a lawyer so that you will know how the taxes on your property and the inheritance of your property may be changed by your marriage.
7. If you do not know a lawyer, the Lawyer Referral Service can help you find one. In large cities, call your Legal Aid office for assistance if you cannot afford a lawyer.

CONTACT INFORMATION:

Louisiana Attorney General's Office – (main no.) 225-326-6000

Web address: www.ladoj.ag.state.la.us

Statewide Lawyer Referral and Information Service – Toll Free (888) 503 –
LRIS (5747)

Local Bar Services:

Baton Rouge - (225) 344-9926

Lafayette - (337) 237-4700

Lake Charles - (337) 436-2914

New Orleans - (504) 561-8828

Shreveport - (318) 222-0720

Southwest Louisiana - (337) 436-3308

Louisiana State Bar Association web site: <http://www.lsba.org/>

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